



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2013-0025]

Revocation of Permanent Variances Granted for Chimney Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice revoking permanent variances.

SUMMARY: With this notice, the Occupational Safety and Health Administration (“OSHA” or the “Agency”) is revoking permanent variances that it granted between 1973 and 2010 to 24 companies engaged in chimney construction (hereafter, “previous variances”). The previous variances provided the companies with an alternative means of complying with provisions of OSHA standards regulating boatswains’ chairs, personnel platforms, and hoist towers.

DATES: The effective date for revoking the previous variances is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Copies of the Federal Register notice: Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This Federal Register notice, as well as other relevant information, also is available on OSHA’s web page at <http://www.osha.gov>.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-

3647, Washington, DC 20210; telephone: (202) 693-1999; email:

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General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S.

Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: johnson.david.w@dol.gov. OSHA's web page includes information about the Variance Program (see

<http://www.osha.gov/dts/otpca/variances/index.html>).

SUPPLEMENTARY INFORMATION:

On October 2, 2013, OSHA published a Federal Register notice (78 FR 60900) in which it updated the previous variances with a single, permanent variance ("the uniform variance"). The 2013 Federal Register notice granted the uniform variance to a number of the companies that held previous variances. On January 31, 2014, OSHA published a Federal Register notice (79 FR 5462) in which it proposed to revoke the previous variances. OSHA received no comments on the proposed revocation. Therefore, with this action, OSHA is revoking the previous variances and invites employers not covered by the uniform variance to submit applications for an equivalent variance.

I. Background

A. Previous Chimney-Related Construction Variances

From 1973 through 2010, the Agency granted permanent variances to a number of chimney-construction companies from the provisions of the OSHA standards that

regulate boatswains' chairs, personnel platforms, and hoist towers, specifically, paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.¹ Several of these previous variances limited the scope of the variances only to chimneys constructed using jump-form construction techniques and procedures (see, for example, 38 FR 8545 granted April 3, 1973, and 71 FR 10557 granted March 1, 2006), while more recently granted chimney-construction variances, limited the scope of the variances to the construction of tapered chimneys using jump-form construction techniques and procedures (see, for example, 75 FR 22424; April 28, 2010). In addition, the conditions specified in the previous variances became somewhat inconsistent over time, and none of these variances kept pace with updated construction methods used by, and technological advances taking place in, the chimney-construction industry.

B. Grant of the Uniform Chimney-Construction Variance

In the period from November 2012 through January 2013, 15 employers involved in chimney construction submitted applications for a new permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 ("Variances and other relief under section 6(d)"). The applicants construct, renovate, repair, maintain, inspect, and demolish tall chimneys and similar structures made of concrete, brick, and steel. This work, which occurs throughout the United

¹See 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 72 FR 6002 (February 8, 2007), 74 FR 34789 (July 17, 2009), 74 FR 41742 (August 18, 2009), and 75 FR 22424 (April 28, 2010).

States, requires employers to transport employees and construction tools and materials to and from elevated worksites located inside and outside these structures.

As in the past, the employers sought a permanent variance from paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's chair, as well as paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, which regulate personnel platforms and hoist towers. OSHA consolidated these variance applications into a single application and published the uniform variance application, along with a request for public comment, in the Federal Register on March 21, 2013 (78 FR 17432). On October 2, 2013, the Agency granted the permanent variance in a notice published in the Federal Register (78 FR 60900). The scope of the uniform variance included both chimneys and chimney-related structures such as silos and towers, as well as jump-form and slip-form construction techniques and procedures, regardless of structural configuration.² Additionally, the uniform variance added or revised conditions that improved worker safety, including: Condition 3 (Definitions), which defines 29 key terms used in the variance, usually technical terms, for the purpose of standardizing and clarifying the meaning of these terms; Condition 5 (Hoist Machines), which updates the requirements for the design and use of hoist machines based on guidance provided by American National Standards Institute (ANSI) A10.22-2007; and Condition 6 (Methods of Operation), which expands and clarifies the training requirements for both the operators of the hoist machine and the employees who ride in the cage (this condition adopted several provisions of ANSI A10.22-2007). (See the

²Throughout this notice, OSHA uses the terms “jump-form construction” and “slip-form construction” instead of “jump-form formwork construction” and “slip-form formwork construction,” respectively.

table and preamble in 78 FR 60900, October 2, 2013, for an extensive description of the differences between the uniform variance and a previous variance published in 2010.)

In view of the Agency's history with the variances granted for chimney-related construction, OSHA determined that it should replace the previously granted variances (1973 through 2010) with the recently published uniform variance. In doing so, OSHA believes that the uniform variance, when compared to the previous variances: (1) provides more consistency across the conditions specified by the variance, thereby expediting OSHA's enforcement of the conditions; (2) allows employers to use updated technology and industry practices; and (3) increases worker safety.

In developing the uniform variance, OSHA sent a letter on December 21, 2012, to all employers holding previous chimney-construction variances (see Ex. OSHA-2013-0025-0001 for a sample letter). The letter informed them of the process of developing a uniform variance and of OSHA's plan to revoke all previous chimney-construction variances once OSHA published the uniform variance. In response to this letter, 15 chimney-construction employers holding previous variances applied for the new uniform variance.

II. Multi-State Variances

Twenty-seven states have safety and health plans approved by OSHA under Section 18 of the Occupational Safety and Health (OSH) Act (29 U.S.C. 667) and 29 CFR part 1952 ("Approved State Plans for Enforcement of State Standards"). Of these states, 18 states have standards identical to the Federal OSHA standards. These states are: Alaska, Arizona, Hawaii, Indiana, Iowa, Kentucky, Maryland, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Vermont, Virginia, and

Wyoming. Accordingly, the revocation action announced in this notice applies to the previous variances granted in the 17 states and two territories that have standards identical to the Federal OSHA standards.³

The State Plans operated by Hawaii, Iowa, Kentucky, and South Carolina either declined to accept the terms of previous variances or stated that affected employers must apply to the state program for a state variance prior to initiating chimney construction. Because these State Plans elected to exercise control over the variances, this revocation action does not apply to any chimney-construction variances granted under these State-Plan programs.

State-Plan programs operated by four states (California, Michigan, Utah, and Washington) have requirements in their construction standards for the tackle used to rig a boatswain's chair, personnel platforms, and hoist towers that differ from the requirements specified by the Federal OSHA standards. In these cases, only the State-Plan program has authority to issue variances from these requirements. Therefore, the revocation action described herein does not apply to any variances issued by these states involving these requirements.

³State-Plan programs operated by four states and one territory (Connecticut, Illinois, New Jersey, New York, and the Virgin Islands) limit their occupational safety and health authority to public-sector (i.e., state and local government) employers only. Federal OSHA retains authority over private-sector employers in these states and territory; therefore, private-sector employers in these states and territory are subject to the previous variances granted by Federal OSHA, and to this revocation action. Twenty-one states and one territory operate State Plans that exercise occupational safety and health authority over both public-sector employers and private-sector employers; these states and territory are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The application of this revocation action to these State Plans varies depending on several factors described later in this section.

III. Previous Chimney-Construction Variances

The following table provides information about the previous variances granted by OSHA between 1973 and 2010 for chimney construction, and which are subject to the revocation action described in this notice.⁴ Refer to the Federal Register citation in the table to obtain detailed information about these previous variances.

Table 1
Previous Chimney Variances

Name of Employer (Company)	Variance or Docket No.	Date Granted	<u>Federal Register</u> Citation	Applied for Uniform Variance?
Airtek-Karrena Chimney Corporation	V-79-3	08/31/79	44 FR 51350	No
Avalotis Corporation	OSHA- 2009-005	04/28/10	75 FR 22424	Yes
Bowen Engineering Corporation (merged with Mid-Atlantic Boiler and Chimney, Inc., formerly Alberici-Mid Atlantic, LLC)*	V-04-1	03/01/06	71 FR 10557	Yes
Calaveras Power Partners, Inc.	OSHA- 2007-0046	07/17/09	74 FR 34789	No
Commonwealth Dynamics, Inc.	V-04-1	03/01/06	71 FR 10557	Yes
Continental-Heine Chimney Company, Inc.	V-73-13	04/03/73	38 FR 8545	No
Francis Hankin and Company, Inc.	V-77-12; V-77-6	08/31/79	44 FR 51352	No
Gibraltar Chimney International, LLC	OSHA- 2007-004	08/18/09	74 FR 41742	Yes
Hamon Custodis	V-73-13	04/03/73	38 FR 8545	Yes

⁴As noted above, the previous variances addressed the requirements of paragraph (o)(3) of 29 CFR 1926.452, which regulates the tackle used to rig a boatswain's chair, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, which regulate personnel platforms and hoist towers.

Name of Employer (Company)	Variance or Docket No.	Date Granted	<u>Federal Register</u> Citation	Applied for Uniform Variance?
(formerly Custodis Construction Co. Inc., then Custodis Cuttrell, Inc.)*				
Hoffman, Inc.	OSHA-2007-004	08/18/09	74 FR 41742	Yes
International Chimney Corporation	V-04-2	12/06/05	70 FR 72659	Yes
Karrena-International, LLC	V-04-2	12/06/05	70 FR 72659	Yes
Kiewit Power Constructors Co.**	OSHA-2007-004	08/18/09	74 FR 41742	Yes
Matrix Service, Inc.	OSHA-2007-0046	07/17/09	74 FR 34789	No
Matrix SME, Inc. (formerly Matrix Service Industrial Contractors, Inc.)*	V-04-2	12/06/05	70 FR 72659	Yes
NAES Power Contractors (formerly American Boiler & Chimney Company)*	V-02-1	09/08/03	68 FR 52961	Yes
Oak Park Chimney Corporation	V-02-1	09/08/03	68 FR 52961	No
PDM Steel Service Centers (formerly Pittsburgh-Des Moines Steel Company)*	V-77-12; V-77-6	08/31/79	44 FR 51352	No
Pullman Power, LLC (formerly M. W. Kellogg Co., then Pullman Power Products Corporation)*	V-73-13	04/03/73	38 FR 8545	Yes
R and P Industrial Chimney Co., Inc.	V-04-1	03/01/06	71 FR 10557	Yes
Rust Constructors, Inc. (formerly Rust Engineering Company)*	V-73-13	04/03/73	38 FR 8545	No
T. E. Ibberson Company	OSHA-2007-0046	07/17/09	74 FR 34789	Yes

Name of Employer (Company)	Variance or Docket No.	Date Granted	<u>Federal Register Citation</u>	Applied for Uniform Variance?
TIC-The Industrial Company	OSHA- 2007-0046	07/17/09	74 FR 34789	Yes
Zachry Construction Corporation	OSHA- 2007-0046	07/17/09	74 FR 34789	No

*The current name of the company is listed. Names in parentheses are the name listed on the original variance, followed by any subsequent names.

**Includes a subsequent interim order granted 03/26/07.

IV. Revocation of Previous Variances

Based on its review of the record and the findings described in this Federal Register notice, OSHA determined that the conditions specified in the uniform variance published on October 2, 2013, (78 FR 60900) provide consistent and technologically sound measures designed to replace and supersede the previous chimney-construction variances granted by OSHA prior to 2010. Accordingly, OSHA finds that the uniform variance, when compared to the previous variances: (1) provides more consistency across the conditions specified by the variance, thereby expediting OSHA's enforcement of the conditions; (2) allows employers to use updated technology and industry practices; and (3) increases worker safety. Therefore, under the authority granted by 29 CFR 1905.13(a)(2), on January 31, 2014, OSHA published a Federal Register notice (79 FR 5462) in which it proposed to revoke the previous variances. OSHA received no comments on the proposed revocation, including no comments from State Plans.

Consequently, following the publication of this revocation notice, employers involved in chimney construction will either have to comply with the requirements of paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552 or, if granted a uniform variance, comply with

the conditions of that variance. OSHA granted the uniform variance to the following 15 employers:

- Avalotis Corp; 400 Jones Street, Verona, PA 15147
- Bowen Engineering Corporation (merged with Mid-Atlantic Boiler & Chimney, Inc., (formerly Alberici Mid-Atlantic, LLC)), 8802 N. Meridian St. Indianapolis, IN 46260
- Commonwealth Dynamics, Inc., 95 Court Street, Portsmouth, NH 03801
- Gibraltar Chimney International, LLC, 92 Cooper Ave. Tonawanda, NY 14150
- Hamon Custodis, Inc. (formerly Custodis Construction Co., Inc., then Custodis Cuttrell, Inc.), 58 East Main Street, Somerville, NJ 08876
- Hoffmann, Inc., 6001 49th Street South, Muscatine, IA 52761
- International Chimney Corporation, 55 South Long Street, Williamsville, NY 14221
- Karrena International Chimney, 57 South Long Street, Williamsville, NY 14221
- Kiewit Power Constructors Co., 9401 Renner Blvd., Lenexa, KS 66219
- Matrix SME, Inc. (formerly Matrix Service Industrial Contractors, Inc.), 1510 Chester Pike, Suite 500, Eddystone, PA 19022
- NAES Power Contractors (formerly American Boiler and Chimney Company), 167 Anderson Rd., Cranberry Township, PA 16066
- Pullman Power, LLC (formerly M. W. Kellogg Co., then Pullman Power Products Corporation), 6501 E. Commerce Avenue, Suite 200, Kansas City, MO 64120
- R and P Industrial Chimney Co., Inc., 244 Industrial Parkway, Nicholasville, KY 40356

- T. E. Ibberson Company, 828 5th St. South, Hopkins, MN 55343
- TIC-The Industrial Company, 9780 Mt. Pyramid Ct., Suite 100, Englewood, CO 80112

Nine employers hold previous variances and did not apply for the uniform variance.

These employers are:

- Airtek-Karrena Chimney Corporation, 1776 Heritage Drive, Quincy, MA 02171
- Calaveras Power Partners, Inc., P. O. Box 241769, San Antonio, TX 78224
- Continental-Heine Chimney Company, Inc., 127 North Dearborne Street, Chicago, IL 60602
- Francis Hankin and Company, Inc., 117 Crockford Boulevard, Scarborough, Ontario, Canada, MIR 3B9
- Matrix Service, Inc., 3810 Bakerview Spur, Bellingham, WA 98226
- Oak Park Chimney Corporation, 1800 Des Plaines Avenue, Forest Park, IL 60130
- PDM Steel Service Centers (formerly Pittsburgh-Des Moines Steel Company) 3535 East Myrtle Street, Stockton, CA 95205
- Rust Constructors, Inc. (formerly Rust Engineering Co.), 2 Perimeter Park South, Suite 300W, Birmingham, AL 35243
- Zachry Construction Corporation, 527 Logwood, San Antonio TX 78221

Under this revocation action, these nine employers, when engaged in chimney construction, will have to comply with the requirements of paragraph (o)(3) of 29 CFR 1926.452 when rigging tackle for boatswain's chairs, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552 when using personnel platforms and hoist towers. OSHA invites these employers, and any other employers

seeking an alternative means of complying with these provisions, to submit applications for a variance containing conditions that are equivalent to the conditions specified by the uniform variance.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by 29 U.S.C. 655, Secretary of Labor's Order No. 1-2012 (76 FR 3912; Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on April 16, 2014.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

BILLING CODE 4510-26-P

**[FR DOC. 2014-09073 FILED 04/21/2014 AT 8:45 AM; PUBLICATION DATE:
04/22/2014]**